provisions to prevent a dangerous outcome. Senator BROWN and I are proposing a complementary idea to limit the size and leverage, not a substitute for breaking the banks apart.

The current banking bill has many important provisions we support. But under its approach, we must hope the financial stability oversight council can identify systemic risks before it is too late. We must hope that regulators will be emboldened to act in a timely manner when before, in the recent past, they failed to act. We must hope better transparency in financial data will produce early warning signals of systemic dangers so clear that a council and panel of judges will unhesitatingly agree. We must hope that capital requirements will be set properly in relation to risks that all too often remain purposefully hidden from view. We must hope that resolution authority will work, when we know it has no cross-border authority to resolve global financial institutions.

Under the current bill, we must hope all future Presidents will appoint regulators as determined to carry out the same strict measures preached belatedly by today's regulators who have been converted by the traumatic experience of their own failures.

All rules to restrict excessive risk taking in banking have a half life. That is because the financial sector is full of very smart people with an incentive to find their way around the rules, particularly to load up on risk, as this is what provides them their excessive profits and gigantic bonuses. I would rather not pin the future of the American economy on so much hope. I would rather Congress act now, definitively and responsibly, to end too big to fail.

The changes in regulations envisioned today in the bill we are proposing would help initially, particularly until the next free market candidate who wins appoints regulators who only believe in self-regulation. This bill establishes hard lines. One of the greatest sayings is: Good fences make good neighbors. This builds the fences. Then we let the regulators do it, and we don't have to worry about the President picking the right regulators. Our bill would provide a legislative size and leverage restriction that would last far longer than the half life of who is appointed to be regulator. We want this to operate for a generation.

In 1933, our forebears, after the Great Depression, made hard rules. They passed Glass-Steagall. They set up the FDIC. They set rules against margins, and they set the uptick rule. We should do no less. Remember, when they passed those bills in 1933, they helped us avoid a financial crisis for almost 50 years.

Some argue we need massive banks, but recent studies show that with over $100 billion in assets—and by the way, these banks, as Senator BROWN said, have over $2 trillion worth of assets—financial institutions no longer achieve additional economies of scale. They simply become dangerous concentrations of financial power that benefit from an implicit government guarantee that they will be saved if they fail. With this implicit guarantee, these firms will continue to have every incentive to use massive amounts of short-term debt to finance the purchase of risky assets. This bill would deal with their ability to be able to do that and would stop it. They would go on and be able to do this without us. They have done it in the past, and there is no reason to think they won't do it in the future until they cause the next crisis and taxpayers must bail them out again. While $100 billion banks would be smaller, they are not small banks. Such banks would have no trouble competing around the world.

Under this bill, we would still have banks far bigger than even that size. People say: Look at other countries. Look what they are doing. Just because other countries subsidize megabanks banks that could send those countries spiraling into a financial crisis should not make us want to do the same.

Everyone agrees—as the Senator from Arizona said—the most important thing is too big to fail. How much can we risk that by doing what other countries are doing, when they are creating banks that are clearly too big to fail? Most people in the oil industry did well under the breakup of Standard Oil, including its shareholders, and the breakup of AT&T helped the telecom industry become more dynamic, competitive, and profitable.

The current Senate bill contains many important provisions that address the causes of the financial crisis, but why risk leaving oversized institutions in place when they potentially are too big to fail? Instead, we should meet the challenge of the moment and have the courage to act, as in this bill, to limit the size and practices of these literally colossal financial institutions, the stability of which are a threat to our economy. This bill is the best hope to ensure future decades of financial stability and the livelihoods of the American people. This bill will put the days of too big to fail forever behind us.

Mr. BROWN of Ohio. I thank Senator KAUFMAN.

Some people think about this as a pretty big step, to decide we want to limit the size of banks. It is not something we like to do. We don't want to do more regulation than we have to. We don't want to tell successful companies not to grow. But when we look at what has happened in the past, as Senator KAUFMAN said, we did this right in the 1930s, and it protected our financial system, with a few hiccups but no serious problems until the end of this last decade, when President Bush and the Congress, starting with President Clinton—President Bush accelerated it and weakened regulation—repealed regulation and appointed, you might use the term ''lapdogs''—that might not be a senatorial sounding word.

Mr. KAUFMAN. Lapdogs is another way of saying people who believe self-regulation will work.

Alan Greenspan also was quoted as saying we should breakup the banks; Standard Oil wasn't bad. At the time he said, after it was over, a year later he gave a speech and said: I really thought self-regulation would work. I am dismayed that it didn't.

The way I put it, it is as if there were a whole group of folks, not just in the financial regulatory area but all over the government, who basically believed the markets are great. I am a big believer in markets, but I also like football. The idea that someone would say: Football is great, but those referees keep blowing their damn whistles. Let's get the referees off the field so football players can be football players. We know what would happen if we pulled all the referees off the field in a game. I wouldn't want to be in the second pileup.

That is what we said with this. We said we are going to pull the referees off the field and see what happens. These were good people. They just didn't believe they had to regulate, and we are now seeing the results.

People say to us, when we propose these things—I have had several press people say to me—why don't we leave it up to the regulators? They can set these numbers. We shouldn't set these numbers.

Let me read from a couple things. The 1970 Bank Holding Company Act amendments gave the Fed the power to terminate a company's authority to engage in nonbanking activities, basically doing what we are talking about doing, if it finds such action is necessary to prevent undue concentration of resources—I wonder if that went on recently—decreased or unfair competition, conflicts of interest, or unsound banking practices. The Fed had the power to do this. They did not do it.

The Financial Institutions Reform Recovery Enforcement Act also gave regulators the power to restrict an institution's growth and limit its size.

What we are talking about now is giving the regulators essentially what they already have in the present bill. What Senator BROWN and I are saying—and the other cosponsors—is, the buck stops here. We should tell the regulators what these percentages are going to be. Because if we leave it up to the regulators, as Senator BROWN said, these are very powerful people and very powerful institutions.

They hire the very best people to come and make their arguments.

So if you are sitting there running a regulatory agency and you are saying: Oh my God, I don't want to do this, I don't want to shrink these things down—and remember one other thing too. As bad as things were in this latest crisis, think about what has happened during this crisis. They have all exploded. What did we have happen? JPMorgan Chase now includes Washington Mutual, a $400 billion bank.